

## § 404.830

earnings for work in the employ of the United States only if—

(a) Correction is permitted under § 404.821 or § 404.822; and

(b) Any necessary determinations concerning the amount of remuneration paid for your work and the periods for which such remuneration was paid have been made as shown by—

(1) A tax return filed under section 3122 of the Internal Revenue Code (26 U.S.C. 3122); or

(2) A certification by the head of the Federal agency or instrumentality of which you have been an employee or his or her agent. A Federal instrumentality for these purposes includes a nonappropriated fund activity of the armed forces or Coast Guard.

[44 FR 38454, July 2, 1979, as amended at 55 FR 24891, June 19, 1990]

### NOTICE OF REMOVAL OR REDUCTION OF AN ENTRY OF EARNINGS

#### § 404.830 Notice of removal or reduction of your wages.

If we remove or reduce an amount of wages entered on the record of your earnings, we will notify you of this correction if we previously notified you of the amount of your wages for the period involved. We will notify your survivor if we previously notified you or your survivor of the amount of your earnings for the period involved.

#### § 404.831 Notice of removal or reduction of your self-employment income.

If we remove or reduce an amount of self-employment income entered on the record of your earnings, we will notify you of this correction. We will notify your survivor if we previously notified you or your survivor of the amount of your earnings for the period involved.

### Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

AUTHORITY: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e),

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and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

### INTRODUCTION, DEFINITIONS, AND INITIAL DETERMINATIONS

#### § 404.900 Introduction.

(a) *Explanation of the administrative review process.* This subpart explains the procedures we follow in determining your rights under title II of the Social Security Act. The regulations describe the process of administrative review and explain your right to judicial review after you have taken all the necessary administrative steps. These procedures apply also to persons claiming certain benefits under title XVIII of the Act (Medicare); see 42 CFR 405.904(a)(1). The administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

(1) *Initial determination.* This is a determination we make about your entitlement or your continuing entitlement to benefits or about any other matter, as discussed in § 404.902, that gives you a right to further review.

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

(4) *Appeals Council review.* If you are dissatisfied with the decision of the administrative law judge, you may request that the Appeals Council review the decision.

(5) *Federal court review.* When you have completed the steps of the administrative review process listed in paragraphs (a)(1) through (a)(4) of this section, we will have made our final decision. If you are dissatisfied with our final decision, you may request judicial review by filing an action in a Federal district court.

(6) *Expedited appeals process.* At some time after your initial determination has been reviewed, if you have no dispute with our findings of fact and our application and interpretation of the controlling laws, but you believe that a part of the law is unconstitutional, you

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may use the expedited appeals process. This process permits you to go directly to a Federal district court so that the constitutional issue may be resolved.

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, non-adversarial manner. Subject to certain timeframes at the hearing level (see § 404.935) and the limitations on Appeals Council consideration of additional evidence (see § 404.970), we will consider at each step of the review process any information you present as well as all the information in our records. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review, unless you can show us that there was good cause for your failure to make a timely request for review.

[45 FR 52081, Aug. 5, 1980, as amended at 51 FR 300, Jan. 3, 1986; 51 FR 8808, Mar. 14, 1986; 52 FR 4004, Feb. 9, 1987; 78 FR 57259, Sept. 18, 2013; 80 FR 14835, Mar. 20, 2015; 81 FR 90992, Dec. 16, 2016]

### § 404.901 Definitions.

As used in this subpart:

*Date you receive notice* means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.

*Decision* means the decision made by an administrative law judge or the Appeals Council.

*Determination* means the initial determination or the reconsidered determination.

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

*Remand* means to return a case for further review.

*Substantial evidence* means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

*Vacate* means to set aside a previous action.

*Waive* means to give up a right knowingly and voluntarily.

*We, us, or our* refers to the Social Security Administration.

*You* or *your* refers to any person claiming a right under the old age, disability, dependents' or survivors' benefits program.

[45 FR 52081, Aug. 5, 1980, as amended at 73 FR 76943, Dec. 18, 2008]

### § 404.902 Administrative actions that are initial determinations.

Initial determinations are the determinations we make that are subject to administrative and judicial review. We will base our initial determination on the preponderance of the evidence. We will state the important facts and give the reasons for our conclusions in the initial determination. In the old age, survivors' and disability insurance programs, initial determinations include, but are not limited to, determinations about—

- (a) Your entitlement or your continuing entitlement to benefits;
- (b) Your reentitlement to benefits;
- (c) The amount of your benefit;
- (d) A recomputation of your benefit;
- (e) A reduction in your disability benefits because you also receive benefits under a workmen's compensation law;
- (f) A deduction from your benefits on account of work;
- (g) [Reserved]
- (h) Termination of your benefits;
- (i) Penalty deductions imposed because you failed to report certain events;
- (j) Any overpayment or underpayment of your benefits;
- (k) Whether an overpayment of benefits must be repaid to us;
- (l) How an underpayment of benefits due a deceased person will be paid;
- (m) The establishment or termination of a period of disability;
- (n) A revision of your earnings record;
- (o) Whether the payment of your benefits will be made, on your behalf, to a representative payee;
- (p) Your drug addiction or alcoholism;
- (q) Who will act as your payee if we determine that representative payment will be made;
- (r) An offset of your benefits under § 404.408b because you previously received supplemental security income payments for the same period;